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**IN THE
COURT OF APPEALS OF INDIANA**

ADAM ROSS,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A05-0610-CR-580
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Dennis Thomas, Judge Pro-Tempore
Cause No. 49F10-0608-CM-145070

May 30, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Following a bench trial, Adam Ross appeals his conviction of public intoxication, a Class B misdemeanor. Ross raises the sole issue of whether the State introduced sufficient evidence to prove that he was intoxicated in a public place. Concluding that sufficient evidence exists, we affirm.

Facts and Procedural History

The facts most favorable to the judgment indicate that on August 6, 2006, Ross and a friend were at a house owned by the friend of Ross's ex-girlfriend. The father of the homeowner's child arrived and threatened to kill Ross and his friend for being in the residence. Ross then called the police. Officer Kevin Hershberger, of the Indianapolis Police Department, responded to the dispatch related to this call. Upon arriving in the area, he observed Ross running down the sidewalk. Ross saw Officer Hershberger and ran behind the house at which he had been. When Officer Hershberger exited his vehicle, he encountered Ross, who was now wielding a croquet mallet. Officer Hershberger instructed Ross to drop the mallet three times before Ross complied. Officer Hershberger then handcuffed Ross, who had bloodshot and glassy eyes, and "was having trouble standing on his feet, kind of wobbling side to side." Transcript at 7. Officer Hershberger testified that these observations led him to believe that Ross was intoxicated. Officer Hershberger left Ross sitting on the porch while he went inside the home. Upon determining that the person who had caused the disturbance had left, Officer Hershberger removed the handcuffs from Ross and instructed him to go home. At this point, Ross became verbally abusive, telling Officer Hershberger

that he could not tell him what to do and that he could go wherever he wanted to go. Ross then walked down to the sidewalk and back up to the driveway, yelling the entire time. At this point, Officer Hershberger placed Ross back in handcuffs and arrested him.

The State charged Ross with public intoxication, and a bench trial was held on September 15, 2006. Officer Hershberger and Ross were the only witnesses at this trial. The trial court found Ross guilty of public intoxication and sentenced him to 180 days, all but the time already served suspended to probation. Ross now appeals.

Discussion and Decision

In order to convict a defendant of public intoxication, the State must prove that the defendant was “in a public place or a place of public resort in a state of intoxication.” Ind. Code § 7.1-5-1-3. Ross argues solely that the State failed to demonstrate that he was in a public place.

Public sidewalks are considered public places for purposes of Indiana Code section 7.1-5-1-3. Price v. State, 600 N.E.2d 103, 116 (Ind. Ct. App. 1992), aff’d in relevant part, 622 N.E.2d 954. Officer Hershberger testified that he observed Ross running on a public sidewalk, and that his subsequent observations led him to believe that Ross was intoxicated.¹ Therefore, sufficient evidence exists from which the trial court could have found that Ross was intoxicated in public.

Ross makes much of the fact that Officer Hershberger did not have probable cause to

¹ Although Ross does not argue that insufficient evidence exists to demonstrate that he was intoxicated, we note that the testimony of the arresting officer, standing alone, may be sufficient to support a finding that the defendant was intoxicated. Price, 600 N.E.2d at 116.

arrest Ross when he observed him running on the sidewalk, and that the arrest occurred on private property. We agree that had Officer Hershberger arrested Ross on private property without having observed Ross on public property, sufficient evidence to support the conviction would not exist. See Moore v. State, 634 N.E.2d 825, 827 (Ind. Ct. App. 1994) (insufficient evidence existed where defendant was observed only in ex-wife's driveway and backyard). However, Officer Hershberger observed Ross on a public sidewalk. The fact that he did not arrest Ross until he was on private property is immaterial. To draw such a distinction would enable those in fear of arrest for public intoxication to avoid arrest by simply stepping onto private property.

Ross also points out that when Officer Hershberger observed Ross on the sidewalk, there was no reason to believe Ross was intoxicated. However, when Officer Hershberger observed Ross seconds later on the private property, Ross was carrying a croquet mallet, had bloodshot eyes, and was wobbling. Therefore, the inescapable inference is that when Ross was on the public sidewalk, he was also intoxicated. Cf. Wilhite v. State, 225 Ind. 45, 48, 71 N.E.2d 925, 926 (1947) (proof that defendant was intoxicated in a public place "may be made by direct evidence, by circumstantial evidence, or by proper inferences based upon the evidence"). Therefore, the evidence was sufficient to support a finding that Ross was intoxicated in public.

Ross also argues that Officer Hershberger's real motivation for arresting Ross was that Ross became belligerent and disrespectful after being told to leave. The fact that Officer Hershberger was originally inclined to give Ross a break has no affect on the sufficiency of

the evidence indicating that Ross was indeed intoxicated in public.

Conclusion

We conclude that sufficient evidence exists to support a finding that Ross was intoxicated in public.

Affirmed.

SULLIVAN, J., and VAIDIK, J., concur.